

No. 86-2015

(3)

Supreme Court, U.S.
F E L L E R D

IN THE

SEP 5 1987

JOSEPH F. SPANIOL, JR.
CLERK

Supreme Court of the United States

OCTOBER TERM, 1986

GENERAL ELECTRIC COMPANY,

Petitioner,

v.

UNITED STATES OF AMERICA, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

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QUESTIONS PRESENTED

1. Whether the fact that the United States pays workmen's compensation benefits to its employees under its own Act gives it immunity from tort liability under Maryland law.
2. Whether this Court should hold the Petition for a Writ of Certiorari herein pending its decision in *Westfall v. Erwin*, No. 86-714.

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ARGUMENT

1. Respondent's argument (Brief, page 6) that "[b]ecause a private employer who pays workmen's compensation benefits to an employee is immune from

liability in tort under Maryland law, the government is entitled to the same immunity where it has provided an employee with equivalent benefits" is an incorrect statement under Maryland law.

Payment of workmen's compensation benefits under any act *other than* the Maryland Workmen's Compensation Act does not make the United States an "employer subject to the provisions of this article," namely, Article 101 of the Annotated Code of Maryland, the Maryland Workmen's Compensation Act. To be subject to the provisions of the Maryland Workmen's Compensation Act is an absolute condition precedent to immunity from tort liability *under Maryland law*, that is, as provided by Annotated Code of Maryland, Article 101, Section 15. Lacking that status, the United States cannot claim the immunity it provides.

The holdings of "other courts of appeal" are not controlling in that they did not construe the Maryland Workmen's Compensation Act, which is the *only* statute which may be considered here pursuant to the Federal Tort Claims Act.

2. The Court should not hold the Petition for a Writ of Certiorari herein pending its decision in *Westfall v. Erwin*, No. 86-714.

The Court should grant the Petition herein and hear this case together with the *Westfall* case, so that it may view the issue from all angles and have the benefit of all arguments, pro and con, which have been advanced in the two cases.

CONCLUSION

On the basis of the foregoing, it is respectfully submitted that the Court should issue its Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit for review of its judgment herein.

Respectfully submitted,

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